

AFRICAN GROWTH AND OPPORTUNITY ACT

MARCH 2, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 1432]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1432) to authorize a new trade and investment policy for sub-Saharan Africa, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “African Growth and Opportunity Act”.

SEC. 2. FINDINGS.

The Congress finds that it is in the mutual economic interest of the United States and sub-Saharan Africa to promote stable and sustainable economic growth and development in sub-Saharan Africa. To that end, the United States seeks to facilitate market-led economic growth in, and thereby the social and economic development of, the countries of sub-Saharan Africa. In particular, the United States seeks to assist sub-Saharan African countries, and the private sector in those countries, to achieve economic self-reliance by—

- (1) strengthening and expanding the private sector in sub-Saharan Africa, especially women-owned businesses;
- (2) encouraging increased trade and investment between the United States and sub-Saharan Africa;
- (3) reducing tariff and nontariff barriers and other trade obstacles;
- (4) expanding United States assistance to sub-Saharan Africa’s regional integration efforts;
- (5) negotiating free trade areas;
- (6) establishing a United States-Sub-Saharan Africa Trade and Investment Partnership;
- (7) focusing on countries committed to accountable government, economic reform, and the eradication of poverty;
- (8) establishing a United States-Sub-Saharan Africa Economic Cooperation Forum; and
- (9) continuing to support development assistance for those countries in sub-Saharan Africa attempting to build civil societies.

SEC. 3. STATEMENT OF POLICY.

The Congress supports economic self-reliance for sub-Saharan African countries, particularly those committed to—

- (1) economic and political reform;
- (2) market incentives and private sector growth;
- (3) the eradication of poverty; and
- (4) the importance of women to economic growth and development.

SEC. 4. ELIGIBILITY REQUIREMENTS.

(a) **IN GENERAL.**—A sub-Saharan African country shall be eligible to participate in programs, projects, or activities, or receive assistance or other benefits under this Act if the President determines that the country does not engage in gross violations of internationally recognized human rights and has established, or is making continual progress toward establishing, a market-based economy, such as the establishment and enforcement of appropriate policies relating to—

- (1) promoting free movement of goods and services between the United States and sub-Saharan Africa and among countries in sub-Saharan Africa;
- (2) promoting the expansion of the production base and the transformation of commodities and nontraditional products for exports through joint venture projects between African and foreign investors;
- (3) trade issues, such as protection of intellectual property rights, improvements in standards, testing, labeling and certification, and government procurement;
- (4) the protection of property rights, such as protection against expropriation and a functioning and fair judicial system;
- (5) appropriate fiscal systems, such as reducing high import and corporate taxes, controlling government consumption, participation in bilateral investment treaties, and the harmonization of such treaties to avoid double taxation;

(6) foreign investment issues, such as the provision of national treatment for foreign investors and other measures to create an environment conducive to domestic and foreign investment;

(7) supporting the growth of regional markets within a free trade area framework;

(8) governance issues, such as eliminating government corruption, minimizing government intervention in the market such as price controls and subsidies, and streamlining the business license process;

(9) supporting the growth of the private sector, in particular by promoting the emergence of a new generation of African entrepreneurs;

(10) encouraging the private ownership of government-controlled economic enterprises through divestiture programs;

(11) removing restrictions on investment; and

(12) observing the rule of law, including equal protection under the law and the right to due process and a fair trial.

(b) **ADDITIONAL FACTORS.**—In determining whether a sub-Saharan African country is eligible under subsection (a), the President shall take into account the following factors:

(1) An expression by such country of its desire to be an eligible country under subsection (a).

(2) The extent to which such country has made substantial progress toward—

(A) reducing tariff levels;

(B) binding its tariffs in the World Trade Organization and assuming meaningful binding obligations in other sectors of trade; and

(C) eliminating nontariff barriers to trade.

(3) Whether such country, if not already a member of the World Trade Organization, is actively pursuing membership in that Organization.

(4) Where applicable, the extent to which such country is in material compliance with its obligations to the International Monetary Fund and other international financial institutions.

(5) The extent to which such country has a recognizable commitment to reducing poverty, increasing the availability of health care and educational opportunities, the expansion of physical infrastructure in a manner designed to maximize accessibility, increased access to market and credit facilities for small farmers and producers, and improved economic opportunities for women as entrepreneurs and employees, and promoting and enabling the formation of capital to support the establishment and operation of micro-enterprises.

(6) Whether or not such country engages in activities that undermine United States national security or foreign policy interests.

(c) **CONTINUING COMPLIANCE.**—

(1) **MONITORING AND REVIEW OF CERTAIN COUNTRIES.**—The President shall monitor and review the progress of sub-Saharan African countries in order to determine their current or potential eligibility under subsection (a). Such determinations shall be based on quantitative factors to the fullest extent possible and shall be included in the annual report required by section 15.

(2) **INELIGIBILITY OF CERTAIN COUNTRIES.**—A sub-Saharan African country described in paragraph (1) that has not made continual progress in meeting the requirements with which it is not in compliance shall be ineligible to participate in programs, projects, or activities, or receive assistance or other benefits, under this Act.

(d) **VIOLATIONS OF HUMAN RIGHTS AND INELIGIBLE COUNTRIES.**—It is the sense of the Congress that a sub-Saharan African country should not be eligible to participate in programs, projects, or activities, or receive assistance or other benefits under this Act if the government of that country is determined by the President to engage in a consistent pattern of gross violations of internationally recognized human rights.

SEC. 5. ADDITIONAL AUTHORITIES AND INCREASED FLEXIBILITY TO PROVIDE ASSISTANCE UNDER THE DEVELOPMENT FUND FOR AFRICA.

(a) **USE OF SUSTAINABLE DEVELOPMENT ASSISTANCE TO SUPPORT FURTHER ECONOMIC GROWTH.**—It is the sense of the Congress that sustained economic growth in sub-Saharan Africa depends in large measure upon the development of a receptive environment for trade and investment, and that to achieve this objective the United States Agency for International Development should continue to support programs which help to create this environment. Investments in human resources, development, and implementation of free market policies, including policies to liberalize agricultural markets and improve food security, and the support for the rule of law

and democratic governance should continue to be encouraged and enhanced on a bilateral and regional basis.

(b) **DECLARATIONS OF POLICY.**—The Congress makes the following declarations:

(1) The Development Fund for Africa established under chapter 10 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2293 et seq.) has been an effective tool in providing development assistance to sub-Saharan Africa since 1988.

(2) The Development Fund for Africa will complement the other provisions of this Act and lay a foundation for increased trade and investment opportunities between the United States and sub-Saharan Africa.

(3) Assistance provided through the Development Fund for Africa will continue to support programs and activities that promote the long term economic development of sub-Saharan Africa, such as programs and activities relating to the following:

(A) Strengthening primary and vocational education systems, especially the acquisition of middle-level technical skills for operating modern private businesses and the introduction of college level business education, including the study of international business, finance, and stock exchanges.

(B) Strengthening health care systems.

(C) Strengthening family planning service delivery systems.

(D) Supporting democratization, good governance and civil society and conflict resolution efforts.

(E) Increasing food security by promoting the expansion of agricultural and agriculture-based industrial production and productivity and increasing real incomes for poor individuals.

(F) Promoting an enabling environment for private sector-led growth through sustained economic reform, privatization programs, and market-led economic activities.

(G) Promoting decentralization and local participation in the development process, especially linking the rural production sectors and the industrial and market centers throughout Africa.

(H) Increasing the technical and managerial capacity of sub-Saharan African individuals to manage the economy of sub-Saharan Africa.

(I) Ensuring sustainable economic growth through environmental protection.

(4) The African Development Foundation has a unique congressional mandate to empower the poor to participate fully in development and to increase opportunities for gainful employment, poverty alleviation, and more equitable income distribution in sub-Saharan Africa. The African Development Foundation has worked successfully to enhance the role of women as agents of change, strengthen the informal sector with an emphasis on supporting micro and small sized enterprises, indigenous technologies, and mobilizing local financing. The African Development Foundation should develop and implement strategies for promoting participation in the socioeconomic development process of grassroots and informal sector groups such as nongovernmental organizations, cooperatives, artisans, and traders into the programs and initiatives established under this Act.

(c) **ADDITIONAL AUTHORITIES.**—

(1) **IN GENERAL.**—Section 496(h) of the Foreign Assistance Act of 1961 (22 U.S.C. 2293(h)) is amended—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following:

“(3) **DEMOCRATIZATION AND CONFLICT RESOLUTION CAPABILITIES.**—Assistance under this section may also include program assistance—

“(A) to promote democratization, good governance, and strong civil societies in sub-Saharan Africa; and

“(B) to strengthen conflict resolution capabilities of governmental, intergovernmental, and nongovernmental entities in sub-Saharan Africa.”

(2) **CONFORMING AMENDMENT.**—Section 496(h)(4) of such Act, as amended by paragraph (1), is further amended by striking “paragraphs (1) and (2)” in the first sentence and inserting “paragraphs (1), (2), and (3)”.

(d) **WAIVER AUTHORITY.**—Section 496 of the Foreign Assistance Act of 1961 (22 U.S.C. 2293) is amended by adding at the end the following:

“(p) **WAIVER AUTHORITY.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the President may waive any provision of law that earmarks, for a specified country, organization, or purpose, funds made available to carry out this chapter if the President determines, subject to the notification procedures under section 634A, that the waiver of such provision of law would provide improved conditions for the peo-

ple of Africa. The President shall notify the appropriate congressional committees, in accordance with the procedures applicable to reprogramming notifications under section 634A of this Act, at least 15 days before any determination under this paragraph takes effect.

“(2) EXCEPTIONS.—

“(A) CHILD SURVIVAL ACTIVITIES.—The authority contained in paragraph (1) may not be used to waive a provision of law that earmarks funds made available to carry out this chapter for the following purposes:

- “(i) Immunization programs.
- “(ii) Oral rehydration programs.
- “(iii) Health and nutrition programs, and related education programs, which address the needs of mothers and children.
- “(iv) Water and sanitation programs.
- “(v) Assistance for displaced and orphaned children.
- “(vi) Programs for the prevention, treatment, and control of, and research on, tuberculosis, HIV/AIDS, polio, malaria, and other diseases.
- “(vii) Basic education programs for children.
- “(viii) Contribution on a grant basis to the United Nations Children’s Fund (UNICEF) pursuant to section 301 of this Act.

“(B) REQUIREMENT TO SUPERSEDE WAIVER AUTHORITY.—The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the African Growth and Opportunity Act which specifically repeals, modifies, or supersedes such provisions.”.

SEC. 6. UNITED STATES-SUB-SAHARAN AFRICA TRADE AND ECONOMIC COOPERATION FORUM.

(a) DECLARATION OF POLICY.—The President shall convene annual high-level meetings between appropriate officials of the United States Government and officials of the governments of sub-Saharan African countries in order to foster close economic ties between the United States and sub-Saharan Africa.

(b) ESTABLISHMENT.—Not later than 12 months after the date of the enactment of this Act, the President, after consulting with the governments concerned, shall establish a United States-Sub-Saharan Africa Trade and Economic Cooperation Forum (hereafter in this section referred to as the “Forum”).

(c) REQUIREMENTS.—In creating the Forum, the President shall meet the following requirements:

(1) The President shall direct the Secretary of Commerce, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative to host the first annual meeting with the counterparts of such Secretaries from the governments of sub-Saharan African countries eligible under section 4, the Secretary General of the Organization of African Unity, and government officials from other appropriate countries in Africa, to discuss expanding trade and investment relations between the United States and sub-Saharan Africa and the implementation of this Act.

(2)(A) The President, in consultation with the Congress, shall encourage United States nongovernmental organizations to host annual meetings with nongovernmental organizations from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(B) The President, in consultation with the Congress, shall encourage United States representatives of the private sector to host annual meetings with representatives of the private sector from sub-Saharan Africa in conjunction with the annual meetings of the Forum for the purpose of discussing the issues described in paragraph (1).

(3) The President shall, to the extent practicable, meet with the heads of governments of sub-Saharan African countries eligible under section 4 not less than once every two years for the purpose of discussing the issues described in paragraph (1). The first such meeting should take place not later than twelve months after the date of the enactment of this Act.

(d) DISSEMINATION OF INFORMATION BY USIA.—In order to assist in carrying out the purposes of the Forum, the United States Information Agency shall disseminate regularly, through multiple media, economic information in support of the free market economic reforms described in this Act.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(f) LIMITATION ON USE OF FUNDS.—None of the funds authorized under this section may be used to create or support any nongovernmental organization for the

purpose of expanding or facilitating trade between the United States and sub-Saharan Africa.

SEC. 7. UNITED STATES-SUB-SAHARAN AFRICA FREE TRADE AREA.

(a) **DECLARATION OF POLICY.**—The Congress declares that a United States–Sub-Saharan Africa Free Trade Area should be established, or free trade agreements should be entered into, in order to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector development in sub-Saharan Africa.

(b) **PLAN REQUIREMENT.**—

(1) **IN GENERAL.**—The President, taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of sub-Saharan African countries to engage in negotiations to enter into free trade agreements, shall develop a plan for the purpose of entering into one or more trade agreements with sub-Saharan African countries eligible under section 4 in order to establish a United States–Sub-Saharan Africa Free Trade Area (hereafter in this section referred to as the “Free Trade Area”).

(2) **ELEMENTS OF PLAN.**—The plan shall include the following:

(A) The specific objectives of the United States with respect to the establishment of the Free Trade Area and a suggested timetable for achieving those objectives.

(B) The benefits to both the United States and sub-Saharan Africa with respect to the Free Trade Area.

(C) A mutually agreed-upon timetable for establishing the Free Trade Area.

(D) The implications for and the role of regional and sub-regional organizations in sub-Saharan Africa with respect to the Free Trade Area.

(E) Subject matter anticipated to be covered by the agreement for establishing the Free Trade Area and United States laws, programs, and policies, as well as the laws of participating eligible African countries and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.

(F) Procedures to ensure the following:

(i) Adequate consultation with the Congress and the private sector during the negotiation of the agreement or agreements for establishing the Free Trade Area.

(ii) Consultation with the Congress regarding all matters relating to implementation of the agreement or agreements.

(iii) Approval by the Congress of the agreement or agreements.

(iv) Adequate consultations with the relevant African governments and African regional and subregional intergovernmental organizations during the negotiations of the agreement or agreements.

(c) **REPORTING REQUIREMENT.**—Not later than 12 months after the date of the enactment of this Act, the President shall prepare and transmit to the Congress a report containing the plan developed pursuant to subsection (b).

SEC. 8. ELIMINATING TRADE BARRIERS AND ENCOURAGING EXPORTS.

(a) **FINDINGS.**—The Congress makes the following findings:

(1) The lack of competitiveness of sub-Saharan Africa in the global market, especially in the manufacturing sector, make it a limited threat to market disruption and no threat to United States jobs.

(2) Annual textile and apparel exports to the United States from sub-Saharan Africa represent less than 1 percent of all textile and apparel exports to the United States, which totaled \$45,932,000,000 in 1996.

(3) Sub-Saharan Africa has limited textile manufacturing capacity. During 1998 and the succeeding 4 years, this limited capacity to manufacture textiles and apparel is projected to grow at a modest rate. Given this limited capacity to export textiles and apparel, it will be very difficult for these exports from sub-Saharan Africa, during 1998 and the succeeding 9 years, to exceed 3 percent annually of total imports of textile and apparel to the United States. If these exports from sub-Saharan Africa remain around 3 percent of total imports, they will not represent a threat to United States workers, consumers, or manufacturers.

(b) **SENSE OF THE CONGRESS.**—It is the sense of the Congress that—

(1) it would be to the mutual benefit of the countries in sub-Saharan Africa and the United States to ensure that the commitments of the World Trade Organization and associated agreements are faithfully implemented in each of the member countries, so as to lay the groundwork for sustained growth in textile and apparel exports and trade under agreed rules and disciplines;

(2) reform of trade policies in sub-Saharan Africa with the objective of removing structural impediments to trade, consistent with obligations under the World Trade Organization, can assist the countries of the region in achieving greater and greater diversification of textile and apparel export commodities and products and export markets; and

(3) the President should support textile and apparel trade reform in sub-Saharan Africa by, among other measures, providing technical assistance, sharing of information to expand basic knowledge of how to trade with the United States, and encouraging business-to-business contacts with the region.

(c) TREATMENT OF QUOTAS.—

(1) KENYA AND MAURITIUS.—Pursuant to the Agreement on Textiles and Clothing, the United States shall eliminate the existing quotas on textile and apparel exports to the United States—

(A) from Kenya within 30 days after that country adopts an efficient visa system to guard against unlawful transshipment of textile and apparel goods and the use of counterfeit documents; and

(B) from Mauritius within 30 days after that country adopts such a visa system.

The Customs Service shall provide the necessary technical assistance to Kenya and Mauritius in the development and implementation of those visa systems.

(2) OTHER SUB-SAHARAN COUNTRIES.—The President shall continue the existing no quota policy for countries in sub-Saharan Africa. The President shall submit to the Congress, not later than March 31 of each year, a report on the growth in textiles and apparel exports to the United States from countries in sub-Saharan Africa in order to protect United States consumers, workers, and textile manufacturers from economic injury on account of the no quota policy.

(d) CUSTOMS PROCEDURES AND ENFORCEMENT.—

(1) ACTIONS BY COUNTRIES AGAINST TRANSSHIPMENT AND CIRCUMVENTION.—The President should ensure that any country in sub-Saharan Africa that intends to export textile and apparel goods to the United States—

(A) has in place a functioning and effective visa system and domestic laws and enforcement procedures to guard against unlawful transshipment of textile and apparel goods and the use of counterfeit documents; and

(B) will cooperate fully with the United States to address and take action necessary to prevent circumvention, as provided in Article 5 of the Agreement on Textiles and Clothing.

(2) PENALTIES AGAINST EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has willfully falsified information regarding the country of origin, manufacture, processing, or assembly of a textile or apparel article for which duty-free treatment under section 503(a)(1)(C) of the Trade Act of 1974 is claimed, then the President shall deny to such exporter, and any successors of such exporter, for a period of 2 years, duty-free treatment under such section for textile and apparel articles.

(3) APPLICABILITY OF UNITED STATES LAWS AND PROCEDURES.—All provisions of the laws, regulations, and procedures of the United States relating to the denial of entry of articles or penalties against individuals or entities for engaging in illegal transshipment, fraud, or other violations of the customs laws shall apply to imports from Sub-Saharan countries.

(4) MONITORING AND REPORTS TO CONGRESS.—The Customs Service shall monitor and the Commissioner of Customs shall submit to the Congress, not later than March 31 of each year, a report on the effectiveness of the visa systems described in subsection (c)(1) and paragraph (1) of this subsection and on measures taken by countries in Sub-Saharan Africa which export textiles or apparel to the United States to prevent circumvention as described in Article 5 of the Agreement on Textiles and Clothing.

(e) DEFINITION.—For purposes of this section, the term “Agreement on Textiles and Clothing” means the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

SEC. 9. GENERALIZED SYSTEM OF PREFERENCES.

(a) PREFERENTIAL TARIFF TREATMENT FOR CERTAIN ARTICLES.—Section 503(a)(1) of the Trade Act of 1974 (19 U.S.C. 2463(a)(1)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

“(C) ELIGIBLE COUNTRIES IN SUB-SAHARAN AFRICA.—The President may provide duty-free treatment for any article set forth in paragraph (1) of subsection (b) that is the growth, product, or manufacture of an eligible country in sub-Saharan Africa that is a beneficiary developing country, if, after re-

ceiving the advice of the International Trade Commission in accordance with subsection (e), the President determines that such article is not import-sensitive in the context of imports from eligible countries in sub-Saharan Africa. This subparagraph shall not affect the designation of eligible articles under subparagraph (B).”

(b) RULES OF ORIGIN.—Section 503(a)(2) of the Trade Act of 1974 (19 U.S.C. 2463(a)(2)) is amended by adding at the end the following:

“(C) ELIGIBLE COUNTRIES IN SUB-SAHARAN AFRICA.—For purposes of determining the percentage referred to in subparagraph (A) in the case of an article of an eligible country in sub-Saharan Africa that is a beneficiary developing country—

“(i) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (A); and

“(ii) the cost or value of the materials included with respect to that article that are produced in any beneficiary developing country that is an eligible country in sub-Saharan Africa shall be applied in determining such percentage.”

(c) WAIVER OF COMPETITIVE NEED LIMITATION.—Section 503(c)(2)(D) of the Trade Act of 1974 (19 U.S.C. 2463(c)(2)(D)) is amended to read as follows:

“(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES AND ELIGIBLE COUNTRIES IN SUB-SAHARAN AFRICA.—Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any eligible country in sub-Saharan Africa.”

(d) EXTENSION OF PROGRAM.—Section 505 of the Trade Act of 1974 (19 U.S.C. 2465) is amended to read as follows:

“SEC. 505. DATE OF TERMINATION.

“(a) COUNTRIES IN SUB-SAHARAN AFRICA.—No duty-free treatment provided under this title shall remain in effect after June 30, 2008, with respect to beneficiary developing countries that are eligible countries in sub-Saharan Africa.

“(b) OTHER COUNTRIES.—No duty-free treatment provided under this title shall remain in effect after June 30, 1998, with respect to beneficiary developing countries other than those provided for in subsection (a).”

(e) DEFINITION.—Section 507 of the Trade Act of 1974 (19 U.S.C. 2467) is amended by adding at the end the following:

“(6) ELIGIBLE COUNTRY IN SUB-SAHARAN AFRICA.—The terms ‘eligible country in sub-Saharan Africa’ and ‘eligible countries in sub-Saharan Africa’ mean a country or countries that the President has determined to be eligible under section 4 of the African Growth and Opportunity Act.”

(f) EFFECTIVE DATE.—The amendments made by this section take effect on July 1, 1998.

SEC. 10. INTERNATIONAL FINANCIAL INSTITUTIONS AND DEBT REDUCTION.

(a) BETTER MECHANISMS TO FURTHER GOALS FOR SUB-SAHARAN AFRICA.—It is the sense of the Congress that the Secretary of the Treasury should instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Monetary Fund, and the African Development Bank to use the voice and votes of the Executive Directors to encourage vigorously their respective institutions to develop enhanced mechanisms which further the following goals in eligible countries in sub-Saharan Africa:

(1) Strengthening and expanding the private sector, especially among women-owned businesses.

(2) Reducing tariffs, nontariff barriers, and other trade obstacles, and increasing economic integration.

(3) Supporting countries committed to accountable government, economic reform, the eradication of poverty, and the building of civil societies.

(4) Supporting deep debt reduction at the earliest possible date with the greatest amount of relief for eligible poorest countries under the “Heavily Indebted Poor Countries” (HIPC) debt initiative.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that relief provided to countries in sub-Saharan Africa which qualify for the Heavily Indebted Poor Countries debt initiative should primarily be made through grants rather than through extended-term debt, and that interim relief or interim financing should be provided for eligible countries that establish a strong record of macroeconomic reform.

(c) EXECUTIVE BRANCH INITIATIVES.—The Congress supports and encourages the implementation of the following initiatives of the executive branch:

(1) AMERICAN-AFRICAN BUSINESS PARTNERSHIP.—The Agency for International Development devoting up to \$1,000,000 annually to help catalyze relationships between United States firms and firms in sub-Saharan Africa through a variety of business associations and networks.

(2) TECHNICAL ASSISTANCE TO PROMOTE REFORMS.—The Agency for International Development providing up to \$5,000,000 annually in short-term technical assistance programs to help the governments of sub-Saharan African countries to—

(A) liberalize trade and promote exports;

(B) bring their legal regimes into compliance with the standards of the World Trade Organization in conjunction with membership in that Organization; and

(C) make financial and fiscal reforms, as well as the United States Department of Agriculture providing support to promote greater agribusiness linkages.

(3) AGRICULTURAL MARKET LIBERALIZATION.—The Agency for International Development devoting up to \$15,000,000 annually as part of the multi-year Africa Food Security Initiative to help address such critical agricultural policy issues as market liberalization, agricultural export development, and agribusiness investment in processing and transporting agricultural commodities.

(4) TRADE PROMOTION.—The Trade Development Agency increasing the number of reverse trade missions to growth-oriented countries in sub-Saharan Africa.

(5) TRADE IN SERVICES.—Efforts by United States embassies in the countries in sub-Saharan Africa to encourage their host governments—

(A) to participate in the ongoing negotiations on financial services in the World Trade Organization;

(B) to revise their existing schedules to the General Agreement on Trade in Services of the World Trade Organization in light of the successful conclusion of negotiations on basic telecommunications services; and

(C) to make further commitments in their schedules to the General Agreement on Trade in Services in order to encourage the removal of tariff and nontariff barriers and to foster competition in the services sector in those countries.

SEC. 11. SUB-SAHARAN AFRICA EQUITY AND INFRASTRUCTURE FUNDS.

(a) INITIATION OF FUNDS.—It is the sense of the Congress that the Overseas Private Investment Corporation should, within 12 months after the date of the enactment of this Act, exercise the authorities it has to initiate 2 or more equity funds in support of projects in the countries in sub-Saharan Africa.

(b) STRUCTURE AND TYPES OF FUNDS.—

(1) STRUCTURE.—Each fund initiated under subsection (a) should be structured as a partnership managed by professional private sector fund managers and monitored on a continuing basis by the Corporation.

(2) CAPITALIZATION.—Each fund should be capitalized with a combination of private equity capital, which is not guaranteed by the Corporation, and debt for which the Corporation provides guaranties.

(3) TYPES OF FUNDS.—

(A) EQUITY FUND FOR SUB-SAHARAN AFRICA.—One of the funds should be an equity fund, with assets of up to \$150,000,000, the primary purpose of which is to achieve long-term capital appreciation through equity investments in support of projects in countries in sub-Saharan Africa.

(B) INFRASTRUCTURE FUND.—One or more of the funds, with combined assets of up to \$500,000,000, should be used in support of infrastructure projects in countries of sub-Saharan Africa. The primary purpose of any such fund would be to achieve long-term capital appreciation through investing in financing for infrastructure projects in sub-Saharan Africa, including for the expansion of businesses in sub-Saharan Africa, restructurings, management buyouts and buyins, businesses with local ownership, and privatizations.

(4) EMPHASIS.—The Corporation shall ensure that the funds are used to provide support in particular to women entrepreneurs and to innovative investments that expand opportunities for women and maximize employment opportunities for poor individuals.

SEC. 12. OVERSEAS PRIVATE INVESTMENT CORPORATION AND EXPORT-IMPORT BANK INITIATIVES.

(a) OVERSEAS PRIVATE INVESTMENT CORPORATION.—

(1) ADVISORY COMMITTEE.—Section 233 of the Foreign Assistance Act of 1961 is amended by adding at the end the following:

“(e) ADVISORY COMMITTEE.—The Board shall take prompt measures to increase the loan, guarantee, and insurance programs, and financial commitments, of the Corporation in sub-Saharan Africa, including through the establishment and use of an advisory committee to assist the Board in developing and implementing policies, programs, and financial instruments with respect to sub-Saharan Africa. In addition, the advisory committee shall make recommendations to the Board on how the Corporation can facilitate greater support by the United States for trade and investment with and in sub-Saharan Africa. The advisory committee shall terminate 4 years after the date of the enactment of this subsection.”.

(2) REPORTS TO THE CONGRESS.—Within 6 months after the date of the enactment of this Act, and annually for each of the 4 years thereafter, the Board of Directors of the Overseas Private Investment Corporation shall submit to the Congress a report on the steps that the Board has taken to implement section 233(e) of the Foreign Assistance Act of 1961 (as added by paragraph (1)) and any recommendations of the advisory board established pursuant to such section.

(b) EXPORT-IMPORT BANK.—

(1) ADVISORY COMMITTEE FOR SUB-SAHARAN AFRICA.—Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by inserting after paragraph (12) the following:

“(13)(A) The Board of Directors of the Bank shall take prompt measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank’s financial commitments in sub-Saharan Africa under the loan, guarantee, and insurance programs of the Bank.

“(B)(i) The Board of Directors shall establish and use an advisory committee to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion described in subparagraph (A).

“(ii) The advisory committee shall make recommendations to the Board of Directors on how the Bank can facilitate greater support by United States commercial banks for trade with sub-Saharan Africa.

“(iii) The advisory committee shall terminate 4 years after the date of the enactment of this subparagraph.”.

(2) REPORTS TO THE CONGRESS.—Within 6 months after the date of the enactment of this Act, and annually for each of the 4 years thereafter, the Board of Directors of the Export-Import Bank of the United States shall submit to the Congress a report on the steps that the Board has taken to implement section 2(b)(13)(B) of the Export-Import Bank Act of 1945 (as added by paragraph (1)) and any recommendations of the advisory committee established pursuant to such section.

SEC. 13. ESTABLISHMENT OF ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR SUB-SAHARAN AFRICA.

(a) ESTABLISHMENT.—The President shall establish a position of Assistant United States Trade Representative within the Office of the United States Trade Representative to focus on trade issues relating to sub-Saharan Africa.

(b) FUNDING AND STAFF.—The President shall ensure that the Assistant United States Trade Representative appointed pursuant to subsection (a) has adequate funding and staff to carry out the duties described in subsection (a).

SEC. 14. EXPANSION OF THE UNITED STATES AND FOREIGN COMMERCIAL SERVICE IN SUB-SAHARAN AFRICA.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that the United States and Foreign Commercial Service should expand its presence in sub-Saharan Africa by increasing the number of posts and the number of personnel it allocates to sub-Saharan Africa.

(b) REPORTING REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the Secretary of State, should report to the Congress on the feasibility of expanding the presence in sub-Saharan Africa of the United States and Foreign Commercial Service.

SEC. 15. REPORTING REQUIREMENT.

The President shall submit to the Congress, not later than 1 year after the date of the enactment of this Act, and not later than the end of each of the next 4 1-year periods thereafter, a report on the implementation of this Act.

SEC. 16. SUB-SAHARAN AFRICA DEFINED.

For purposes of this Act, the terms “sub-Saharan Africa”, “sub-Saharan African country”, “country in sub-Saharan Africa”, and “countries in sub-Saharan Africa” refer to the following:

Republic of Angola (Angola)
 Republic of Botswana (Botswana)
 Republic of Burundi (Burundi)
 Republic of Cape Verde (Cape Verde)
 Republic of Chad (Chad)
 Democratic Republic of Congo
 Republic of the Congo (Congo)
 Republic of Djibouti (Djibouti)
 State of Eritrea (Eritrea)
 Gabonese Republic (Gabon)
 Republic of Ghana (Ghana)
 Republic of Guinea-Bissau (Guinea-Bissau)
 Kingdom of Lesotho (Lesotho)
 Republic of Madagascar (Madagascar)
 Republic of Mali (Mali)
 Republic of Mauritius (Mauritius)
 Republic of Namibia (Namibia)
 Federal Republic of Nigeria (Nigeria)
 Democratic Republic of Sao Tomé and Príncipe (Sao Tomé and Príncipe)
 Republic of Sierra Leone (Sierra Leone)
 Somalia
 Kingdom of Swaziland (Swaziland)
 Republic of Togo (Togo)
 Republic of Zimbabwe (Zimbabwe)
 Republic of Benin (Benin)
 Burkina Faso (Burkina)
 Republic of Cameroon (Cameroon)
 Central African Republic
 Federal Islamic Republic of the Comoros (Comoros)
 Republic of Côte d’Ivoire (Côte d’Ivoire)
 Republic of Equatorial Guinea (Equatorial Guinea)
 Ethiopia
 Republic of the Gambia (Gambia)
 Republic of Guinea (Guinea)
 Republic of Kenya (Kenya)
 Republic of Liberia (Liberia)
 Republic of Malawi (Malawi)
 Islamic Republic of Mauritania (Mauritania)
 Republic of Mozambique (Mozambique)
 Republic of Niger (Niger)
 Republic of Rwanda (Rwanda)
 Republic of Senegal (Senegal)
 Republic of Seychelles (Seychelles)
 Republic of South Africa (South Africa)
 Republic of Sudan (Sudan)
 United Republic of Tanzania (Tanzania)
 Republic of Uganda (Uganda)
 Republic of Zambia (Zambia)

SEC. 17. CLARIFICATION OF DEDUCTION FOR SEVERANCE PAY.

(a) **IN GENERAL.**—Section 404(a) of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employee’s trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end the following new paragraph:

“(11) **DETERMINATIONS RELATING TO SEVERANCE PAY.**—For purposes of determining under this section—

“(A) whether severance pay is deferred compensation, and

“(B) when severance pay is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.”

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply to taxable years ending after October 8, 1997.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by subsection (a) to change its method of accounting for its first taxable year ending after October 8, 1997—

- (A) such change shall be treated as initiated by the taxpayer,
- (B) such change shall be treated as made with the consent of the Secretary of the Treasury, and
- (C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account in such first taxable year.

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 1432 would authorize a new trade and investment policy toward countries in sub-Saharan Africa.

H.R. 1432, as ordered reported by the Committee on International Relations, and further amended by the Committee on Ways and Means, authorizes a new trade and investment policy toward the countries of sub-Saharan Africa. The bill states that the United States seeks to facilitate market-led economic growth in the countries in sub-Saharan Africa. To this end, H.R. 1432 contains a statement of policy that Congress supports economic self-reliance for sub-Saharan African countries, particularly those committed to economic and political reform; market incentives and private sector growth; the eradication of poverty; and the importance of women to economic growth and development.

The bill would require the President to identify individual countries in sub-Saharan Africa that have established, or are making continual progress toward establishing, a market-based economy consistent with the criteria outlined. After consulting with the governments of eligible countries, H.R. 1432 would require the President to establish a United States-sub-Saharan Africa Trade and Economic Cooperation Forum, not later than 12 months after the date of enactment, for the purpose of convening annual high-level meetings between U.S. government officials and officials of participating sub-Saharan African countries.

H.R. 1432 also declares that a United States-sub-Saharan Africa Free Trade Area should be established, or free trade agreements entered into, to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and for increasing private sector development in the region. To this end, the bill would require the President to develop a plan for entering into one or more trade agreements with eligible sub-Saharan African countries, and report to Congress within 12 months of enactment.

The bill would also require the United States to eliminate the existing quotas on textile and apparel exports to the United States from Kenya and Mauritius within 30 days of those countries adopting visa systems to guard against unlawful transshipments of textile and apparel goods and the use of counterfeit documents. In addition, the provision requires the President to continue the existing policy of not imposing quotas on textile and apparel exports to the United States from other sub-Saharan African countries.

The bill would direct the President to ensure that any country in Africa that intends to export textile and apparel goods to the United States: 1) has in place an effective visa system and domestic laws and enforcement procedures to guard against unlawful

transshipment and the use of counterfeit documents; and 2) cooperates fully with the U.S. to address and take action necessary to prevent circumvention. In addition, the bill would require the President to deny all trade benefits under the bill for two years to any exporter, or the successor of any exporter, determined to have engaged in illegal transshipment.

The bill would extend duty-free treatment under the Generalized System of Preferences (GSP) for beneficiary countries in sub-Saharan Africa that are eligible to participate in the Act until June 30, 2008. In addition, effective July 1, 1998, the bill amends the GSP statute to extend a series of enhanced benefits to sub-Saharan African beneficiary countries participating in the bill, subject to those countries also meeting the statutory criteria and rules of origin under the GSP program. Specifically, these amendments would authorize the President to grant duty-free treatment to products from eligible sub-Saharan African countries that are currently excluded from the GSP program, if he makes a determination after receiving advice from the International Trade Commission that imports of those products are not import sensitive in the context of imports from sub-Saharan Africa. The bill would also provide that the competitive need limits in the GSP program do not apply to imports from sub-Saharan African countries and would allow up to 15 percent U.S. content of an article to count toward the 35 percent local content requirement of the GSP program. Moreover, the bill would allow the 35 percent minimum value content requirement to be cumulated in any eligible sub-Saharan African country.

H.R. 1432, as approved by the Committee, would direct the President to establish a position of Assistant United States Trade Representative for Africa within the Office of the United States Trade Representative to focus on trade issues relating to sub-Saharan Africa.

Finally, the bill would require the President to submit to Congress a report on the implementation of the Act, not later than one year after the date of enactment, and not later than the end of each of the next four one-year periods thereafter.

B. BACKGROUND AND NEED FOR LEGISLATION

Sub-Saharan Africa consists of a diverse set of 48 countries, many of which have undergone significant political and economic change in recent years. Since 1990, more than 25 African nations have held democratic elections. At the same time, more than 30 countries have instituted programs to replace their centralized economies with free markets under the guidance of bilateral and multilateral donors such as the World Bank and the International Monetary Fund.

Despite the fact that 33 of the 48 countries in sub-Saharan Africa are members of the World Trade Organization (WTO), U.S. trade with sub-Saharan African countries relative to overall U.S. trade levels remains low. In 1996, U.S. merchandise exports to the region were valued at \$6.1 billion, while U.S. merchandise imports in return totaled \$15.2 billion. Although virtually all countries in sub-Saharan Africa qualify for duty-free entry on a wide range of products under the GSP program, GSP imports from the region to-

taled only \$576.5 million in 1996, a figure representing only 3.4 percent of all U.S. GSP imports for the year.

In 1994, Congress passed the Uruguay Round Agreements Act, which contained a provision requiring the President to produce a comprehensive trade and development policy for the countries of Africa. The first of the five reports called for by this legislation was submitted to Congress on February 5, 1996, the second on February 18, 1997, and the third on December 23, 1997. Among other provisions, the President's reports set forth a policy framework centered around the five basic objectives of the Administration's Partnership for Growth and Opportunity in Africa. These objectives include trade liberalization and promotion, investment liberalization and promotion, development of the private sector, infrastructure enhancement, and economic reform.

On January 14, 1997, the Committee on Ways and Means requested the International Trade Commission (ITC) to conduct a study of the effect on the U.S. economy of providing quota-free and duty-free access to textiles and apparel from sub-Saharan Africa. In the report sent to Congress on September 2, 1997, the ITC found that the effect on the U.S. industry and workers would be negligible. The ITC noted that sub-Saharan Africa represents a small portion of overall textiles and apparel imports, accounting for less than one percent, or \$383 million, of total U.S. imports in this sector which were \$46 billion in 1996.

The ITC report states that removal of all duties and quotas on imports from sub-Saharan Africa would result in a 26–46 percent increase in these imports from the region (between \$100 million and \$175 million), partly displacing imports from other countries. According to these estimates, imports from sub-Saharan Africa are likely to remain below 2 percent of total U.S. imports of textile and apparel products for at least ten years after the provisions in H.R. 1432 take effect. In fact, the ITC indicated that this estimate most likely overstates the potential increase in sub-Saharan African imports because of structural problems in many of these economies.

With certain exceptions, the ITC found that the textile and apparel industry in sub-Saharan Africa is underdeveloped because of lack of capital, management expertise, experience exporting to developed countries, and poor infrastructure and transportation problems. The exceptions to this finding are Mauritius, which has a well developed, exporting industry (including investment in nearby Madagascar), South Africa (including investments in nearby Lesotho and Swaziland), Zimbabwe, and Kenya. However, the report notes that the industries in these countries have traditionally focused their exports to Europe because of longstanding colonial ties.

Currently, Mauritius and Kenya are the only two sub-Saharan countries under textile and apparel quota arrangements in the U.S. market. Kenya has two quotas, and did not fill either in 1997. Mauritius filled two quota categories in 1997.

C. LEGISLATIVE HISTORY

Committee bill

On April 24, 1997, Messrs. Crane, Rangel, McDermott, Houghton, Jefferson, McNulty, et al. introduced H.R. 1432, the "African

Growth and Opportunity Act” to authorize a new trade and investment policy toward the countries of sub-Saharan Africa.

On May 22, 1997, the Committee on International Relations Subcommittee on Africa ordered the bill H.R. 1432, as amended, favorably reported to the full International Relations Committee. On June 25, 1997, the Committee on International Relations ordered the bill H.R. 1432, as further amended, favorably reported to the House.

On October 23, 1997, the Subcommittee on Trade of the Committee on Ways and Means ordered H.R. 1432, as ordered reported by the Committee on International Relations and as further amended, favorably reported to the Full Committee by a voice vote, with a quorum present.

On February 25, 1998, the Committee on Ways and Means, ordered H.R. 1432, as reported by the Committee on International Relations and as further amended, favorably reported to the House by a voice vote, with a quorum present. The Administration stated its strong support for H.R. 1432.

Legislative hearing

On April 29, 1997, the Subcommittee on Trade held a hearing on ways to expand U.S. trade with the countries of sub-Saharan Africa. The Subcommittee received testimony from both invited and public witnesses, many of whom stressed the importance of trade and investment relations with sub-Saharan Africa to the economic development and future self-reliance of countries in the region. To this end, witnesses from both the U.S. and African private sectors expressed support for H.R. 1432.

II. EXPLANATION OF THE BILL

A. SECTION 1: SHORT TITLE

Present law

No provision.

Explanation of provision

Section 1 states that the Act may be cited as the “African Growth and Opportunity Act.”

Reason for change

The section names the legislation for identification purposes.

Effective date

The provision is effective upon enactment.

B. SECTION 2: FINDINGS

Present law

No provision.

Explanation of provision

Section 2 contains the findings of the Congress that it is in the mutual economic interest of the United States and sub-Saharan Africa to promote stable and sustainable economic growth and devel-

opment in sub-Saharan Africa. To that end, the United States seeks to facilitate market-led economic growth in, and thereby the social and economic development of, the countries of sub-Saharan Africa. In particular, the United States seeks to assist sub-Saharan African countries, and the private sector in those countries, to achieve economic self-reliance by:

- (1) strengthening and expanding the private sector in sub-Saharan Africa, especially women-owned businesses;
- (2) encouraging increased trade and investment between the U.S. and sub-Saharan Africa;
- (3) reducing tariff and non-tariff barriers and other trade obstacles;
- (4) expanding U.S. assistance to sub-Saharan Africa's regional integration efforts;
- (5) negotiating free trade areas;
- (6) establishing a United States-sub-Saharan Africa Trade and Investment Partnership;
- (7) focusing on countries committed to accountable government, economic reform, and the eradication of poverty;
- (8) establishing a United States-sub-Saharan Africa Economic Cooperation Forum; and
- (9) continuing to support development assistance for those countries in sub-Saharan Africa attempting to build civil societies.

Reason for change

In the section, Congress finds that the United States and countries in sub-Saharan Africa have a shared interest in the economic development of sub-Saharan Africa. On this basis, the provision notes ways in which the United States seeks to assist the region in achieving economic self-reliance.

Effective date

The provision is effective upon enactment.

C. SECTION 3: STATEMENT OF POLICY

Present law

No provision.

Explanation of provision

In Section 3, the Congress expresses its support for the economic self-reliance of sub-Saharan African countries, particularly those committed to economic and political reform, market incentives and private sector growth; the eradication of poverty; and the importance of women to economic growth and development.

Reason for change

Congress expresses its support for the economic self-reliance of countries in sub-Saharan Africa, particularly those committed to implementing free market principles, political reform, and economic opportunity for all citizens.

Effective date

The provision is effective upon enactment.

D. SECTION 4: ELIGIBILITY REQUIREMENTS

Present law

No provision.

Explanation of provision

Section 4(a) states that a sub-Saharan African country shall be eligible to participate in this Act only if the President determines that the country does not engage in gross violations of internationally recognized human rights and has established, or is making continual progress toward establishing, a market economy, such as the establishment and enforcement of appropriate policies relating to:

- (1) promoting free movement of goods and services between the U.S. and sub-Saharan Africa and among countries in the region;
- (2) promoting the expansion of the production base and the transformation of commodities and nontraditional products for export through partnerships between African and foreign investors;
- (3) trade issues, such as the protection of intellectual property rights, improvements in standards, testing, labeling and certification, and government procurement;
- (4) the protection of property rights, such as protection against expropriation and a functioning and fair judicial system;
- (5) appropriate fiscal systems, such as reducing high import and corporate taxes, controlling government consumption, participation in bilateral investment treaties, and the harmonization of such treaties to avoid double taxation;
- (6) foreign investment issues, such as the provision of national treatment for investors and other measures conducive to domestic and foreign investment;
- (7) supporting the growth of regional markets within a free trade area framework;
- (8) governance issues, such as eliminating government corruption and minimizing government intervention in the market;
- (9) supporting the growth of the private sector, in particular by promoting the emergence of a new generation of African entrepreneurs;
- (10) encouraging the private ownership of government-controlled economic enterprises through divestiture programs;
- (11) removing restrictions on investment; and,
- (12) observing the rule of law, including equal protection under the law and the right to due process and a fair trial.

In determining whether a sub-Saharan African country is eligible, section 4(b) requires the President to take into account the following factors:

- (1) An expression by such country of its desire to be an eligible country.

(2) The extent to which such country has made substantial progress toward reducing tariff and non-tariff levels, binding its tariffs in the World Trade Organization (WTO) and assuming meaningful binding obligations in other sectors of trade.

(3) Whether such country, if not already a member of the WTO, is actively pursuing membership.

(4) Where applicable, the extent to which such country is in material compliance with its obligation to the International Monetary Fund and other international financial institutions.

(5) The extent to which such country has a recognizable commitment to reducing poverty, increasing the availability of health care and educational opportunities, the expansion of physical infrastructure, increased access to market and credit facilities for small farmers and producers, and improved economic opportunities for women as entrepreneurs and employees and promoting and enabling the formation of capital to support the establishment and operation of micro-enterprises.

(6) Whether or not such country engages in activities that undermine U.S. national security or foreign policy interests.

Section 4(c) requires the President to monitor and review the progress of sub-Saharan African countries in order to determine their current or potential eligibility under subsection (a). Such determinations shall be based on quantitative factors to the fullest extent possible and shall be included in the annual report required by section 15. The provision also states that a sub-Saharan African country that has not made continual progress in meeting the requirements with which it is not in compliance shall be ineligible to participate in this Act.

Section 4(d) expresses the sense of the Congress that a sub-Saharan African country should not be eligible to participate in programs, projects, or activities, or receive assistance or other benefits under this Act if the government of that country is determined by the President to engage in a consistent pattern of gross violations of internationally recognized human rights.

Reason for change

Section 4 outlines the eligibility requirements for countries in sub-Saharan Africa to participate in the Act. In particular, the provision requires the President to determine whether individual countries in sub-Saharan Africa have established, or are making continual progress toward establishing, a market-based economy consistent with the criteria outlined. The Committee urges the President to make determinations regarding country eligibility as soon as practicable.

Effective date

The provision is effective upon enactment.

E. SECTION 6: UNITED STATES-SUB-SAHARAN AFRICA TRADE AND ECONOMIC COOPERATION FORUM

Present law

No provision.

Explanation of provision

In order to foster close economic ties between the United States and sub-Saharan Africa, section 6(a) directs the President to convene annual high-level meetings between appropriate officials of the U.S. government and government officials of the sub-Saharan African countries eligible to participate in the Act. After consulting with the governments concerned, section 6(b) directs the President to establish a United States-sub-Saharan Africa Trade and Economic Cooperation Forum not later than 12 months after the date of enactment.

In creating the Forum, the President shall, under section 6(c), direct the Secretary of Commerce, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative to host the first annual meeting with their counterparts from the eligible governments, as well as the Secretary General of the Organization of African Unity, and government officials from other appropriate countries in Africa, to discuss expanding trade and investment relations between the United States and sub-Saharan Africa and the implementation of this Act. In consultation with Congress, the President shall encourage U.S. non-governmental organizations (NGOs) to host annual meetings with NGOs from sub-Saharan Africa, and representatives of the U.S. private sector to host annual meetings with representatives of the private sector in sub-Saharan Africa, in conjunction with the annual Forum meetings. To the extent practicable, the President shall meet with the heads of governments of eligible sub-Saharan African countries not less than once every two years for the purposes of discussing expanding trade and investment relations between the United States and sub-Saharan Africa and the implementation of this Act. The President's first meeting with other heads of state from sub-Saharan Africa should take place not less than 12 months after the date of enactment.

In order to assist in carrying out the purposes of the Forum, section 6(d) requires the United States Information Agency to disseminate regularly, through multiple media, economic information in support of the free market economic reforms described in this Act.

Section 6(e) authorizes such sums as may be necessary to carry out this section. Section 6(f) prohibits the use of funds authorized under the section to create or support any nongovernmental organization for the purpose of expanding or facilitating trade between the United States and sub-Saharan Africa.

Reason for change

In order to expand U.S. trade and investment relations with sub-Saharan Africa and achieve the goals of the Act, the Committee believes that it is important to foster a regular dialogue between U.S. government officials and their counterparts from eligible sub-Saharan African countries. To this end, after consulting with eligible sub-Saharan African governments, section 6 requires the President to direct the Secretary of Commerce, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative to host the first annual meeting of a United States-sub-Saharan Africa Trade and Economic Cooperation Forum. The Committee also believes that it would help to promote the goals of this Act if the President, to the extent practicable, met with the heads of state of

the governments eligible to participate in the Act not less than once every two years.

Effective date

The provision is effective upon enactment.

F. SECTION 7: UNITED STATES-SUB-SAHARAN AFRICA FREE TRADE AREA

Present law

No provision.

Explanation of provision

In section 7(a), Congress declares that a United States-sub-Saharan Africa Free Trade Area should be established, or free trade agreements entered into, in order to serve as the catalyst for increasing trade between the United States and sub-Saharan Africa and increasing private sector development in sub-Saharan Africa.

To this end, section 7(b) requires the President, taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of sub-Saharan African countries to engage in negotiations to enter into free trade agreements, to develop a plan for the purpose of entering into one or more trade agreements with sub-Saharan African countries eligible to participate in the Act. The President's plan shall include the following:

(1) The specific objectives of the U.S. with respect to the establishment of the Free Trade Area and a suggested timetable for achieving those objectives.

(2) The benefits to both the U.S. and sub-Saharan Africa with respect to the Free Trade Area.

(3) A mutually agreed-upon timetable for establishing the Free Trade Area.

(4) The implications for and the role of regional and sub-regional organizations in sub-Saharan Africa with respect to the Free Trade Area.

(5) Subject matter anticipated to be covered by the Free Trade Area and U.S. laws, programs, and policies, as well as the laws of participating eligible African countries and existing bilateral and multilateral and economic cooperation and trade agreements, that may be affected by the agreement or agreements.

(6) Procedures to ensure adequate consultation with Congress and the private sector, consultation with Congress regarding all matters related to implementation and approval, and adequate consultation with the relevant African governments and African regional and subregional intergovernmental organizations during the negotiations of the agreement or agreements.

Section 7(c) requires the President, not later than 12 months after the date of enactment, to prepare and transmit to Congress a report on the plan developed.

Reason for change

By eliminating the barriers that presently exist to developing stronger, mutually beneficial trade and investment relations between the United States and sub-Saharan Africa, the Committee believes that the establishment of a Free Trade Area, or the negotiation of one or more free trade agreements, would serve as an important catalyst in the economic development of sub-Saharan Africa. After taking into account the provisions of the treaty establishing the African Economic Community and the willingness of the governments of eligible countries in sub-Saharan Africa, the section requires the President to develop a plan for the purpose of entering into one or more trade agreements with sub-Saharan African countries. In the development of the plan, the Committee believes that the President should seek to complete the negotiations within a similar time frame agreed to in other multilateral fora, such as the Asia-Pacific Economic Cooperation (APEC) forum, or sooner if practicable.

Effective date

The provision is effective upon enactment.

G. SECTION 8: ELIMINATING TRADE BARRIERS AND ENCOURAGING EXPORTS

Present law

Certain textile and apparel products from Kenya and Mauritius are subject to import quotas under bilateral agreements negotiated on a product-category basis under authority of section 204 of the Agriculture Act of 1956 and in accordance with the WTO Agreement on Textiles and Clothing.

Explanation of provision

Section 8(a) contains findings of Congress that:

(1) The lack of competitiveness of sub-Saharan Africa in the global market make it a limited threat to market disruption and no threat to United States jobs.

(2) Annual textile and apparel exports to the United States from sub-Saharan Africa represent less than 1 percent of all textile and apparel exports to the United States, which totaled \$45,932,000,000 in 1996.

(3) Sub-Saharan Africa has limited textile manufacturing capacity. During 1998 and the succeeding 4 years, this limited capacity to manufacture textiles and apparel is projected to grow at a modest rate. Given this limited capacity to export textiles and apparel, it will be very difficult for these exports from sub-Saharan Africa, during 1998 and the succeeding 9 years, to exceed 3 percent annually of total imports of textile and apparel to the United States. If these exports from sub-Saharan Africa remain around 3 percent of total imports, they will not represent a threat to United States workers, consumers, or manufacturers.

Section 8(b) expresses the sense of Congress that:

(1) It would be to the mutual benefit of the countries in sub-Saharan Africa and the United States to ensure that the com-

mitments of the World Trade Organization are faithfully implemented in each of the member countries;

(2) Reform of trade policies in sub-Saharan Africa with the objective of removing structural impediments to trade can assist the countries of the region in achieving greater diversification of textile and apparel export commodities and products and export markets; and,

(3) The President should support textile and apparel trade reform in sub-Saharan Africa by providing technical assistance and encouraging business-to-business contacts with the region.

Section 8(c)(1) provides that, pursuant to the WTO Agreement on Textiles and Clothing, the United States shall eliminate the existing quotas on textile and apparel exports to the United States from Kenya and Mauritius within 30 days after these countries adopt an efficient visa system to guard against unlawful transshipment of textile and apparel goods and the use of counterfeit documents. The provision requires the Customs Service to provide technical assistance to Kenya and Mauritius in the development and implementation of visa systems.

Section 8(c)(2) requires the President to: (1) continue the existing no quota policy for other countries in sub-Saharan Africa; and, (2) submit a report to the Congress by March 31 of each year concerning the growth in textiles and apparel exports to the United States from countries in sub-Saharan Africa in order to protect United States consumers, workers, and textile manufacturers from economic injury due to the no quota policy.

Section 8(d)(1) states that the President should ensure that any sub-Saharan African country that intends to export textile and apparel goods to the United States: 1) has in place an effective visa system to guard against unlawful transshipment of textile and apparel goods and the use of counterfeit documents; and, 2) will cooperate fully with the United States to address and take action necessary to prevent circumvention, as provided in Article 5 of the WTO Agreement on Textiles and Clothing (see below).

Section 8(d)(2) increases penalties on exporters who have been found to have engaged in illegal transshipment. If the President determines, based on sufficient evidence, that an exporter has willfully falsified information regarding the country of origin, manufacture, processing, or assembly of a textile or apparel article for which duty-free treatment under the Generalized System of Preferences program is claimed, then the President shall deny to such an exporter duty-free treatment under this section for textile and apparel articles for a period of two years.

Section 8(d)(3) underscores the fact that all provisions of the laws, regulations, and procedures of the United States relating to the denial of entry of articles or penalties against individuals or entities for engaging in illegal transshipment, fraud, or other violations of the customs laws shall apply to imports from sub-Saharan countries.

In order to facilitate close monitoring by the Administration and expanded oversight by the Committee, Section 8(d)(4) requires that the Customs Service submit to the Congress, by not later than March 31 of each year, a report on the effectiveness of visa systems required of Kenya and Mauritius and other countries that intend

to export textiles and apparel products to the U.S., and on measures taken by countries in sub-Saharan Africa to prevent circumvention as described in Article 5 of the WTO Agreement on Textiles and Clothing.

Pursuant to Article 5 of the WTO Agreement on Textiles and Clothing, countries agree that circumvention by transshipment, re-routing, false declaration concerning country or place of origin, and falsification of official documents undermines the effectiveness of trade restraints on textile and apparel products. Therefore WTO countries have agreed to establish the necessary legal provisions and/or administrative procedures to address and take action, consistent with their domestic laws and procedures, against such circumvention.

Article 5 obligates countries to cooperate fully to establish the relevant facts in places of import, export, and transshipment. The Agreement establishes that such cooperation will include: 1) an investigation of circumvention practices which increase exports to the WTO Member maintaining quotas; 2) exchange of documents, correspondence and other relevant information to the extent available; and, 3) facilitation of plant visits and contacts. Under the WTO, the U.S. maintains full authority to immediately deny entry of any goods suspected of being transshipped, and to appropriately adjust charges to quota levels in order to reflect the true country or place of origin, provided that the WTO is adequately notified of the charges, including a full justification.

Reason for change

In developing countries around the world, the textile and apparel industry has served as a primary sector for economic development and job creation. Given the limited manufacturing capacity that exists in sub-Saharan Africa now and for the foreseeable future, the Committee believes that the existing policy of not imposing quotas on textile and apparel imports from the region should remain in place. In order to ensure that textile and apparel products shipped to the United States are manufactured in the region, the section envisages that countries which intend to export textiles and apparel to the United States will have in place an effective visa system to guard against unlawful transshipments and the use of counterfeit documents and will cooperate fully with the United States in preventing transshipments.

The Administration is committed to closely monitoring the issue. Combined with the provisions for cooperation with sub-Saharan African countries and the expanded penalties against violators contained in the bill, the Committee believes that U.S. firms and workers will be sufficiently protected against problems caused by illegal transshipment and other Customs fraud.

The Committee also believes that the reports required of the President and the Customs Service under this section will be useful to the Committee in monitoring the effect of the provision on the growth in textile and apparel exports to the United States from countries in sub-Saharan Africa in order to protect U.S. consumers, workers, and textile manufacturers from economic injury due to the no quota policy.

Effective date

The provision is effective upon enactment.

H. SECTION 8: GENERALIZED SYSTEM OF PREFERENCES

Present law

Title V of the Trade Act of 1974, as amended, grants authority to the President to provide duty-free treatment on imports of eligible articles from beneficiary developing countries (BDC). Under section 503(a)(1) the President may not designate any article as GSP eligible within the following categories:

- (1) textiles and apparel articles which were not eligible articles for purposes of this title on January 1, 1994;
- (2) watches, except watches entered after June 30, 1989 that the President determines will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or U.S. insular possessions;
- (3) import-sensitive electronic articles;
- (4) import-sensitive steel articles;
- (5) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not GSP eligible articles on January 1, 1995;
- (6) import-sensitive semimanufactured and manufactured glass products; and,
- (7) any other articles the President determines to be import-sensitive in the context of GSP.

Under section 502(a)(2) the President is authorized to designate any article that is the growth, product, or manufacture of a least developed developing country (LDDC) as an eligible article with respect to imports from LDDCs, if the President determines such article is not import-sensitive in the context of imports from LDDCs. This authority does not apply to statutorily exempt articles listed under paragraphs (1), (2), and (5) above.

Under section 503(b)(3), no quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity is eligible for duty-free treatment.

Under section 503(c)(2)(D), whenever the President determines that exports by any BDC to the United States of a GSP eligible article—

- (1) exceed a dollar limit of \$80 million a year (a number which increases by \$5 million annually), or
- (2) equal or exceed a 50 percent share of the total value of U.S. imports of the article, then, not later than July 1 of the next year, such country is not treated as a BDC with respect to such article.

Under section 503(c)(2)(A), GSP duty-free treatment applies to any eligible article which is the growth, product or manufacture of a BDC if: (1) that article is imported directly from a BDC into the U.S. customs territory; and, (2) the sum of (a) the cost or value of the materials produced in the BDC or member countries in an association which is treated as one BDC, plus (b) the direct costs of processing operations performed in such BDC or member countries is not less than 35 percent of the value of the article.

Under section 505, no duty-free treatment shall remain in effect after June 30, 1998.

Explanation of provision

All of the criteria in current law regarding designation of beneficiary developing countries under the GSP program would continue to apply without change to African countries to receive extension of the GSP program and additional product coverage benefits under this bill. That is, in order to receive duty-free GSP benefits under the bill, African countries must meet both GSP designation criteria and the eligibility requirements set forth in section 4 of H.R. 1432. The statutory GSP designation criteria include internationally-recognized worker rights, intellectual property rights, compensation for property expropriation, and market access.

Section 9(a) of the bill amends section 503(a)(1) of the Trade Act of 1974 to authorize the President to grant duty-free GSP treatment for products from eligible African GSP beneficiary countries that are currently excluded from the GSP program, if, after receiving advice from the International Trade Commission (ITC), he determines that imports of these products are not import sensitive in the context of imports from sub-Saharan African countries. Opportunities for public comment would be provided in making this determination.

The bill does not change the rule of origin requirements under current law for GSP duty-free treatment on any currently eligible or any additional products, including textiles and apparel, namely that articles must be the growth, product, or manufacture of an eligible country and also contain a minimum 35 percent local value. As under present law, processes such as simple combining, packaging, or dilution would not constitute substantial transformation to qualify an article for trade benefits under this program. The article must also be directly imported from a beneficiary country.

Textile and apparel products eligible for duty-free and quota-free treatment must be substantially transformed in sub-Saharan Africa as determined by the “Breaux-Cardin” rules of origin enacted into law in 1994 (section 334 of P.L. 103–465).

With respect to the second required test of value content, section 9(b) of the bill amends section 503(a)(2) of the Trade Act of 1974 to allow up to 15 percent of the total value of the article from U.S.-made materials to count toward the 35 percent local value requirement for duty-free entry under the GSP program. In order to encourage regional economic integration in Africa, the bill provides that the minimum 35 percent local value content may be cumulated in any eligible African country.

Section 9(c) amends section 503(c)(2)(D) of the Trade Act of 1974 to stipulate that the competitive need limits do not apply to imports from eligible countries in sub-Saharan Africa.

Section 9(d) amends section 505 of the Trade Act of 1974 to extend the GSP program for ten years, until June 30, 2008, for designated countries in sub-Saharan Africa.

Section 9(f) establishes July 1, 1998 as the effective date for the amendments made to the GSP program for sub-Saharan Africa.

Reason for change

The GSP program, which provides duty-free access to the U.S. market for eligible articles from BDCs, has proven to be an effective program in the development of many countries around the world. In recent years, however, the program has undergone a series of short term extensions due to budgetary constraints. For this reason, the Committee believes that it is important to give the business community greater certainty about the program's existence for sub-Saharan African countries eligible to participate in the African Growth and Opportunity Act, thereby encouraging long-term investment and development in the region. At the same time, the Committee continues to seek the renewal of the existing GSP program for BDCs worldwide beyond the current expiration date of June 30, 1998.

Given the low utilization of the GSP program by exporters in sub-Saharan Africa at present, the Committee believes that these reforms of the program are appropriate for beneficiaries in sub-Saharan Africa that are eligible to participate in the benefits of this Act.

The bill establishes the date of July 1, 1998 as an effective date in order to clarify when the new sub-Saharan elements of the GSP program established by this bill will begin to apply to these countries.

I. SECTION 13: ESTABLISHMENT OF ASSISTANT UNITED STATES
TRADE REPRESENTATIVE FOR SUB-SAHARAN AFRICA

Present law

Section 141 of the Trade Act of 1974 established the Office of the United States Trade Representative within the Executive Office of the President and directed the President to appoint a person to head the office and to serve as United States Trade Representative (USTR).

Explanation of provision

Section 13(a) requires the President to establish a position of Assistant United States Trade Representative (AUSTR) within the Office of the United States Trade Representative to focus on trade issues relating to sub-Saharan Africa. Section 13(b) requires the President to ensure that the AUSTR for Africa has adequate funding and staff.

Reason for change

The combined population of sub-Saharan Africa represents a potential market of nearly 700 million consumers for exports of U.S. goods and services. Given the importance of exports to future U.S. economic growth and job creation, the Committee believes that a position of AUSTR for Africa should be created within the Office of USTR to focus on trade issues relating to sub-Saharan Africa. The Committee also believes that the President should ensure that the AUSTR for Africa has adequate funding and staff to carry out his or her responsibilities consistent with the goals of this Act.

Effective date

The provision is effective upon enactment.

J. SECTION 15: REPORTING REQUIREMENT

Present law

No provision.

Explanation of provision

The President shall submit to Congress not later than one year after the date of enactment, and not later than the end of each of the next four one-year periods thereafter, a report on the implementation of this Act.

Reason for change

The Committee requests that the President submit five annual reports to Congress on the implementation of this Act in order to assist the Committee in its oversight responsibilities on trade between the United States and the countries in sub-Saharan Africa.

Effective date

The provision is effective upon enactment.

K. SECTION 16: SUB-SAHARAN AFRICA DEFINED

Present law

No provision.

Explanation of provision

For purposes of this Act, the terms ‘sub-Saharan Africa’, ‘sub-Saharan African country’, ‘country in sub-Saharan Africa’, and ‘countries in sub-Saharan Africa’ refer to the following: Republic of Angola (Angola), Republic of Botswana (Botswana), Republic of Burundi (Burundi), Republic of Cape Verde (Cape Verde), Republic of Chad (Chad), Democratic Republic of Congo, Republic of the Congo (Congo), Republic of Djibouti (Djibouti), State of Eritrea (Eritrea), Gabonese Republic (Gabon), Republic of Ghana (Ghana), Republic of Guinea-Bissau (Guinea-Bissau), Kingdom of Lesotho (Lesotho), Republic of Madagascar (Madagascar), Republic of Mali (Mali), Republic of Mauritius (Mauritius), Republic of Namibia (Namibia), Federal Republic of Nigeria (Nigeria), Democratic Republic of Sao Tome and Principe (Sao Tome and Principe), Republic of Sierra Leone (Sierra Leone), Somalia, Kingdom of Swaziland (Swaziland), Republic of Togo (Togo), Republic of Zimbabwe (Zimbabwe), Republic of Benin (Benin), Burkina Faso (Burkina), Republic of Cameroon (Cameroon), Central African Republic, Federal Islamic Republic of the Comoros (Comoros), Republic of Cote d’Ivoire (Cote d’Ivoire), Republic of Equatorial Guinea (Equatorial Guinea), Ethiopia, Republic of the Gambia (Gambia), Republic of Guinea (Guinea), Republic of Kenya (Kenya), Republic of Liberia (Liberia), Republic of Malawi (Malawi), Islamic Republic of Mauritania (Mauritania), Republic of Mozambique (Mozambique), Republic of Niger (Niger), Republic of Rwanda (Rwanda), Republic of Senegal (Senegal), Republic of Seychelles (Seychelles), Republic of South Africa (South Africa)

ca), Republic of Sudan (Sudan), United Republic of Tanzania (Tanzania), Republic of Uganda (Uganda), Republic of Zambia (Zambia).

Reason for change

The section identifies the countries in sub-Saharan Africa for the purposes of this Act.

Effective date

The provision is effective upon enactment.

L. SECTION 17: REVENUE PROVISION: EMPLOYER DEDUCTION FOR SEVERANCE PAY

Present law

For deduction purposes, any method or arrangement that has the effect of a plan deferring the receipt of compensation or other benefits for employees is treated as a deferred compensation plan (sec. 404(b)). In general, contributions under a deferred compensation plan (other than certain pension, profit-sharing and similar plans) are deductible in the taxable year in which an amount attributable to the contribution is includible in income of the employee. However, vacation pay which is treated as deferred compensation is deductible for the taxable year of the employer in which the vacation pay is paid to the employee (sec. 404(a)(5)).

Temporary Treasury regulations provide that a plan, method, or arrangement defers the receipt of compensation or benefits to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. A plan, method or arrangement is presumed to defer the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the 3rd calendar month after the end of the employer's taxable year in which the related services are rendered (the "2½ month" period). A plan, method or arrangement is not considered to defer the receipt of compensation or benefits for more than a brief period of time after the end of the employer's taxable year to the extent that compensation or benefits are received by the employee on or before the end of the applicable 2½ month period. (Temp. Treas. Reg. sec. 1.404(b)-1T A-2).

The Tax Court recently addressed the issue of when vacation pay and severance pay are considered deferred compensation in *Schmidt Baking Co., Inc.*, 107 T.C. 271 (1996). In *Schmidt Baking*, the taxpayer was an accrual basis taxpayer with a fiscal year that ended December 28, 1991. The taxpayer funded its accrued vacation and severance pay liabilities for 1991 by purchasing an irrevocable letter of credit on March 13, 1992. The parties stipulated that the letter of credit represented a transfer of substantially vested interest in property to employees for purposes of section 83, and that the fair market value of such interest was includible in the employees' gross incomes for 1992 as a result of the transfer.¹ The

¹ While the rules of section 83 may govern the income inclusion, section 404 governs the deduction if the amount involved is deferred compensation.

Tax Court held that the purchase of the letter of credit, and the resulting income inclusion, constituted payment of the vacation and severance pay within the 2½ month period. Thus, the vacation and severance pay were treated as received by the employees within the 2½ month period and were not treated as deferred compensation. The vacation pay and severance pay were deductible by the taxpayer for its 1991 fiscal year pursuant to its normal accrual method of accounting.

Reasons for change

The Committee believes that the decision in *Schmidt Baking* reaches an inappropriate and unintended result. To permit methods such as that used in *Schmidt Baking* to be considered payment or receipt would allow taxpayers to avoid the 2½ month rule and inappropriately accelerate deductions. The Committee believes that the intent of the 2½ month rule was clearly to provide that a deduction for deferred compensation is not available for the current taxable year unless the compensation is actually paid to employees within 2½ months after the end of the year. Moreover, previous legislative histories reflect Congressional intent and understanding that compensation actually paid beyond the 2½ month period is deferred compensation.²

The Committee is only addressing the issue of *Schmidt Baking* at this time with respect to severance pay because of the revenue needs associated with this bill. The effect of *Schmidt Baking* with respect to vacation pay and other types of deferred compensation (other than severance pay) is addressed in other legislation.³

Further, the Committee is concerned that taxpayers may inappropriately extend the rationale of *Schmidt Baking* to other situations in which a deduction or other tax consequences are contingent upon an item being paid. The Committee does not believe that, as a general rule, letters of credit and similar mechanisms should be considered payment for any purposes of the Code.

Explanation of provision

The bill provides that, for purposes of determining whether severance pay is deferred compensation (under Code sec. 404), the severance pay is not considered to be paid or received until actually received by the employee. In addition, severance pay is not considered paid to an employee until actually received by the employee. The provision is intended to overrule the result in *Schmidt Baking*. Thus, with respect to the determination of whether severance pay is deferred compensation, the fact that the value of the severance pay is includible in the income of employees within the applicable 2½ month period is not relevant. Rather, the severance pay must have been actually received by employees within the 2½ month pe-

²See, e.g., the legislative history to the Omnibus Budget Reconciliation Act of 1987.

³A provision that overrules *Schmidt Baking* with respect to vacation pay and other deferred compensation (including severance pay) is included in H.R. 2646, the "Education Savings Act for Public and Private Schools," as passed by the House on October 23, 1997. (See H. Rept. 105-332, October 21, 1997.) A provision that overrules *Schmidt Baking* with respect to vacation pay and other deferred compensation (other than severance pay) is included in H.R. 2676, the "Internal Revenue Service Restructuring and Reform Act of 1997," as passed by the House. (See H. Rept. 105-364, October 31, 1997).

riod in order for the severance pay not to be treated as deferred compensation.

It is intended that similar arrangements, in addition to the letter of credit approach used in *Schmidt Baking*, do not constitute actual receipt by the employee, even if there is an income inclusion. Thus, for example, actual receipt does not include the furnishing of a note or letter or other evidence of indebtedness of the taxpayer, whether or not the evidence is guaranteed by any other instrument or by any third party. As a further example, actual receipt does not include a promise of the taxpayer to provide service or property in the future (whether or not the promise is evidenced by a contract or other written agreement). In addition, actual receipt does not include an amount transferred as a loan, refundable deposit, or contingent payment. Amounts set aside in a trust for employees generally are not considered to be actually received by the employee.

The provision does not change the rule under which deferred compensation (other than vacation pay and deferred compensation under qualified plans) is deductible in the year includible in the gross income of employees participating in the plan if separate accounts are maintained for each employee.

There is concern that the type of arrangement used in *Schmidt Baking* may be tried to circumvent other provisions of the Code where payment is required in order for a deduction to occur. Thus, it is intended that the Secretary will prevent the use of similar arrangements. No inference is intended that the result in *Schmidt Baking* is present law beyond its immediate facts or that the use of similar arrangements is permitted under present law.

The provision does not affect the determination of whether an item is includible in income.

Effective date

The provision is effective for taxable years ending after October 8, 1997. Any change in method of accounting required by the provision would be treated as initiated by the taxpayer with the consent of the Secretary of the Treasury. Any adjustment required by section 481 as a result of the change would be taken into account in the year of the change.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of the bill H.R. 1432.

MOTION TO REPORT THE BILL

The bill, H.R. 1432, as ordered reported by the Committee on International Relations and further amended, was ordered favorably reported, by voice vote on February 25, 1998, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECT

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee agrees with cost estimates furnished by the Congressional Budget Office (CBO) on H.R. 1432, as amended, set forth below.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 1432 reduces tax expenditures by the amount of the revenue offset provision amending Internal Revenue Code section 404(a), and reduces revenue as a result of the extension of the Generalized System of Preferences.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 26, 1998.

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1432, the African Growth and Opportunity Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Alyssa Trzeszkowski.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 1432.—The African Growth and Opportunity Act

Summary: The Congressional Budget Office has reviewed the African Growth and Opportunity Act, as ordered reported on February 25, 1998 by the House Committee on Ways and Means. H.R. 1432 would authorize a new trade and investment policy for sub-Saharan Africa. The bill would also clarify the Internal Revenue Code to overrule the Schmidt Baking Company case with respect to severance pay. CBO and the Joint Committee on Taxation (JCT) estimate that enacting this bill would increase governmental receipts by \$62 million in 1998, and by \$50 million over the 1998–2003 period, net of income and payroll tax offsets. Because enacting H.R. 1432 would affect receipts, pay-as-you-go procedures would apply to the bill.

H.R. 1432 contains one new private-sector mandate, but does not contain any intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), and therefore would not impose any costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1432 is shown in the following table.

ESTIMATED BUDGETARY IMPACT OF H.R. 1432, THE AFRICAN GROWTH AND OPPORTUNITY ACT

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	1998-03
REVENUES							
Permanent extension and expansion of GSP to Sub-Saharan							
Africa	-4	-30	-46	-48	-50	-53	-231
Repeal Schmidt Baking with respect to severance pay	66	105	75	11	12	12	281

BASIS OF ESTIMATE

Revenues

The Generalized System of Preferences (GSP) affords nonreciprocal tariff preferences to approximately 145 developing countries to aid their economic development and to diversify and expand their production and exports. The United States GSP currently expires on June 30, 1998. H.R. 1432 would renew GSP for eligible sub-Saharan African countries and extend the program through May 31, 2005. The bill also would amend the program to lessen the rule of origin and competitive need limitation requirements for products from the region. CBO estimates that the renewal of GSP would reduce governmental receipts by about \$180 million over the 1998–2003 period. CBO assumes that this provision would be effective July 1, 1998.

In addition, the bill would authorize the President to grant duty-free GSP treatment for products currently excluded from GSP that the International Trade Commission (ITC) determines are not import sensitive in the context of imports from sub-Saharan Africa. CBO estimates that this provision would reduce governmental receipts by about \$52 million over the 1998–2003 period. This estimate assumes that some products (including most textile and apparel goods) that have been considered import sensitive by ITC in the past would remain ineligible for GSP under the bill. CBO assumes that the expansion of products from sub-Saharan Africa eligible for GSP would be effective July 1, 1998. H.R. 1432 also would eliminate the existing textile quotas on imports from Kenya and Mauritius, if these countries adopt an effective visa system to guard against transshipments. CBO estimates that this provision would have a negligible effect on receipts.

The bill also clarifies the Internal Revenue Code of 1986 with respect to deductions for accrued severance pay to reverse the result reached in the case of the Schmidt Baking Company, Inc. v. Commissioner of Internal Revenue. JCT estimates this provision will increase revenues by \$66 million in 1998, and by \$281 million in the years 1998 through 2002. CBO concurs with this estimate.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that H.R. 1432 would affect receipts. Therefore, pay-as-you-go procedures would apply to the bill. The pay-as-you-go impact is summarized below.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	1998–03
Changes in outlays	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)
Changes in receipts	62	75	29	– 37	– 38	– 51	50

¹ Not applicable.

Intergovernmental and private-sector impact: The Joint Committee on Taxation has determined that H.R. 1432 contains one new private sector mandate, as defined in UMRA. The provision relating to clarification of deduction for accrued severance pay is estimated to increase tax revenue by \$281 million over fiscal years 1998 through 2003, which is the estimated amount that the private sector will be required to spend in order to comply with this federal private sector mandate. The revenue provision will offset the budget cost of the reduced tariffs under the trade provision of the bill. The revenue provision will not impose a federal intergovernmental mandate on State, local, or tribal governments, as such governmental entities are generally exempt from federal income tax.

Estimate prepared by: Alyssa Trzeszkowski.

Estimate approved by: Frank Sammartino, Acting Assistant Director for Tax Analysis.

ESTIMATED BUDGET EFFECTS OF H.R. 1432, THE “AFRICAN GROWTH AND OPPORTUNITY ACT” AS PASSED BY THE COMMITTEE ON WAYS AND MEANS—FISCAL YEARS 1998–2003

[Millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	2003	1998–03
1. Permanent extension of GSP to Sub-Saharan Africa ¹ .	7/1/98	– 4	– 30	– 46	– 48	– 50	– 53	– 231
2. Repeal Schmidt Baking with respect to severance pay.	tyea 10/8/97	66	105	75	11	12	12	281
Net total		62	75	29	– 37	– 38	– 41	50

¹ Estimate provided by the Congressional Budget Office.

Note: Details may not add to totals due to rounding.

Legend for “Effective” column: tyea=taxable years ending after

Source: Joint Committee on Taxation.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to subdivision (A) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee concludes that the action taken in this legislation are appropriate given its oversight of international trade and tax matters.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to subdivision (D) of clause 2(1)(4) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee states that no oversight findings or recommendations have been submitted to the Committee by the Com-

mittee on Government Reform and Oversight with respect to the provisions in H.R. 1432.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States.")

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4).

The Committee has reviewed the provisions of the bill (H.R. 1432) as approved by the Committee on February 25, 1998. In accordance with the requirements of Public Law 104-4, the Committee has determined that the following provision of the bill contains a Federal private sector mandate.

Repeal *Schmidt Baking* case with respect to the employer deduction for severance pay.

As indicated in the budget table (in III.A., above), the severance pay provision is estimated to increase revenue by \$281 million over fiscal years 1998-2003. This is no greater than the aggregate estimated amount that the private sector will be required to pay during fiscal years 1998-2003 in order to comply with this Federal private sector mandate. The revenue raised from this provision will offset the budget cost of the trade provisions of the bill. The bill will not impose any Federal intergovernmental mandate on State, local, or tribal governments.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FOREIGN ASSISTANCE ACT OF 1961

* * * * *

PART I

* * * * *

CHAPTER 2—OTHER PROGRAMS

* * * * *

SEC. 233. ORGANIZATION AND MANAGEMENT.—(a) * * *

* * * * *

(e) *ADVISORY COMMITTEE.*—The Board shall take prompt measures to increase the loan, guarantee, and insurance programs, and financial commitments, of the Corporation in sub-Saharan Africa, including through the establishment and use of an advisory committee to assist the Board in developing and implementing policies, programs, and financial instruments with respect to sub-Saharan Africa. In addition, the advisory committee shall make recommendations to the Board on how the Corporation can facilitate greater support by the United States for trade and investment with and in sub-Saharan Africa. The advisory committee shall terminate 4 years after the date of the enactment of this subsection.

* * * * *

CHAPTER 10—DEVELOPMENT FUND FOR AFRICA

* * * * *

SEC. 496. LONG-TERM DEVELOPMENT ASSISTANCE FOR SUB-SAHARAN AFRICA.—(a) * * *

* * * * *

(h) TYPES OF ASSISTANCE.—

(1) * * *

* * * * *

(3) *DEMOCRATIZATION AND CONFLICT RESOLUTION CAPABILITIES.*—Assistance under this section may also include program assistance—

(A) *to promote democratization, good governance, and strong civil societies in sub-Saharan Africa; and*

(B) *to strengthen conflict resolution capabilities of governmental, intergovernmental, and nongovernmental entities in sub-Saharan Africa.*

[(3)] (4) *OTHER ASSISTANCE.*—Funds made available to carry out this section shall be used almost exclusively for assistance in accordance with [paragraphs (1) and (2)] *paragraphs (1), (2), and (3).* Assistance consistent with the purpose of subsection (c) may also be furnished under this section to carry out the provisions of sections 103 through 106 of this Act.

* * * * *

(p) *WAIVER AUTHORITY.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), the President may waive any provision of law that earmarks, for a specified country, organization, or purpose, funds made available to carry out this chapter if the President determines, subject to the notification procedures under section 634A, that the waiver of such provision of law would provide improved conditions for the people of Africa. The President shall notify the appropriate congressional committees, in accordance with the procedures applicable to reprogramming notifications under section 634A of this Act, at least 15 days before any determination under this paragraph takes effect.

(2) *EXCEPTIONS.*—

(A) *CHILD SURVIVAL ACTIVITIES.*—The authority contained in paragraph (1) may not be used to waive a provi-

sion of law that earmarks funds made available to carry out this chapter for the following purposes:

- (i) Immunization programs.
- (ii) Oral rehydration programs.
- (iii) Health and nutrition programs, and related education programs, which address the needs of mothers and children.
- (iv) Water and sanitation programs.
- (v) Assistance for displaced and orphaned children.
- (vi) Programs for the prevention, treatment, and control of, and research on, tuberculosis, HIV/AIDS, polio, malaria, and other diseases.
- (vii) Basic education programs for children.
- (viii) Contribution on a grant basis to the United Nations Children's Fund (UNICEF) pursuant to section 301 of this Act.

(B) *REQUIREMENT TO SUPERSEDE WAIVER AUTHORITY.*—The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the African Growth and Opportunity Act which specifically repeals, modifies, or supersedes such provisions.

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TRADE ACT OF 1974

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TITLE V—GENERALIZED SYSTEM OF PREFERENCES

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SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.

(a) ELIGIBLE ARTICLES.—

(1) DESIGNATION.—

(A) * * *

* * * * *

(C) *ELIGIBLE COUNTRIES IN SUB-SAHARAN AFRICA.*—The President may provide duty-free treatment for any article set forth in paragraph (1) of subsection (b) that is the growth, product, or manufacture of an eligible country in sub-Saharan Africa that is a beneficiary developing country, if, after receiving the advice of the International Trade Commission in accordance with subsection (e), the President determines that such article is not import-sensitive in the context of imports from eligible countries in sub-Saharan Africa. This subparagraph shall not affect the designation of eligible articles under subparagraph (B).

[(C)] (D) *THREE-YEAR RULE.*—If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for des-

ignation as an eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

(2) RULE OF ORIGIN.—

(A) * * *

* * * * *

(C) *ELIGIBLE COUNTRIES IN SUB-SAHARAN AFRICA.*—For purposes of determining the percentage referred to in subparagraph (A) in the case of an article of an eligible country in sub-Saharan Africa that is a beneficiary developing country—

(i) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (A); and

(ii) the cost or value of the materials included with respect to that article that are produced in any beneficiary developing country that is an eligible country in sub-Saharan Africa shall be applied in determining such percentage.

* * * * *

(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITATION.—

(1) * * *

(2) COMPETITIVE NEED LIMITATION.—

(A) * * *

* * * * *

[(D) *LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.*—Subparagraph (A) shall not apply to any least-developed beneficiary developing country.]

(D) *LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES AND ELIGIBLE COUNTRIES IN SUB-SAHARAN AFRICA.*—Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any eligible country in sub-Saharan Africa.

* * * * *

[SEC. 505. DATE OF TERMINATION.

[No duty-free treatment provided under this title shall remain in effect after June 30, 1998.]

SEC. 505. DATE OF TERMINATION.

(a) *COUNTRIES IN SUB-SAHARAN AFRICA.*—No duty-free treatment provided under this title shall remain in effect after June 30, 2008, with respect to beneficiary developing countries that are eligible countries in sub-Saharan Africa.

(b) *OTHER COUNTRIES.*—No duty-free treatment provided under this title shall remain in effect after June 30, 1998, with respect to

beneficiary developing countries other than those provided for in subsection (a).

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SEC. 507. DEFINITIONS.

For purposes of this title:

(1) * * *

* * * * *

(6) *ELIGIBLE COUNTRY IN SUB-SAHARAN AFRICA.*—The terms “eligible country in sub-Saharan Africa” and “eligible countries in sub-Saharan Africa” mean a country or countries that the President has determined to be eligible under section 4 of the African Growth and Opportunity Act.

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SECTION 2 OF THE EXPORT-IMPORT BANK ACT OF 1945

SEC. 2. (a) * * *

(b)(1) * * *

* * * * *

(13)(A) *The Board of Directors of the Bank shall take prompt measures, consistent with the credit standards otherwise required by law, to promote the expansion of the Bank’s financial commitments in sub-Saharan Africa under the loan, guarantee, and insurance programs of the Bank.*

(B)(i) *The Board of Directors shall establish and use an advisory committee to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion described in subparagraph (A).*

(ii) *The advisory committee shall make recommendations to the Board of Directors on how the Bank can facilitate greater support by United States commercial banks for trade with sub-Saharan Africa.*

(iii) *The advisory committee shall terminate 4 years after the date of the enactment of this subparagraph.*

* * * * *

SECTION 404 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES’ TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN

(a) **GENERAL RULE.**—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) * * *

* * * * *

(11) *DETERMINATIONS RELATING TO SEVERANCE PAY.—For purposes of determining under this section—*

(A) whether severance pay is deferred compensation, and

*(B) when severance pay is paid,
no amount shall be treated as received by the employee, or paid,
until it is actually received by the employee.*

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